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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

YASAMINE ILYAVI,  
Plaintiff,  
v.  
SEARS HOLDINGS CORP., and DOES 1  
through 50, inclusive,  
Defendants.

Case No. 2:13-cv-7108-ODW(AJWx)  
**ORDER REMANDING CASE TO  
LOS ANGELES COUNTY  
SUPERIOR COURT**

On September 25, 2013, Defendant Sears Holdings Corp. removed this action from the Los Angeles County Superior Court. But after considering the papers filed with the Notice of Removal, the Court determines that Sears has failed to satisfy its burden of establishing federal jurisdiction. The Court therefore **REMANDS** this action back to Los Angeles County Superior Court.

Federal courts are courts of limited jurisdiction, only having subject-matter jurisdiction over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

A suit filed in state court may be removed to federal court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). But courts strictly construe § 1441 against a finding of removal jurisdiction, and “[f]ederal

1 jurisdiction must be rejected if there is any doubt as to the right of removal in the first  
 2 instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking  
 3 removal bears the burden of establishing federal jurisdiction. *Durham v. Lockheed*  
 4 *Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at 566).

5 Federal courts have original jurisdiction where an action presents a federal  
 6 question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332.  
 7 To exercise diversity jurisdiction, a federal court must find complete diversity of  
 8 citizenship among the adverse parties, and the amount in controversy must exceed  
 9 \$75,000, usually exclusive of interest and costs. 28 U.S.C. § 1332(a).

10 With respect to citizenship, Sears’s Notice of Removal baldly asserts that  
 11 “Plaintiff was and is a resident of Los Angeles County. Thus, Plaintiff was and is a  
 12 citizen of the State of California.” (Notice of Removal ¶ 10.) But the Complaint does  
 13 not declare her citizenship. Residency allegations alone are inadequate to establish  
 14 citizenship; a natural person’s citizenship is “determined by her state of domicile, not  
 15 her state of residence.” *Kantor v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir.  
 16 2001); *see also Jeffcott v. Donovan*, 135 F.2d 213, 214 (9th Cir. 1943) (“Diversity of  
 17 citizenship as a basis for the jurisdiction of a cause in the District Court of the United  
 18 States is not dependent upon the residence of any of the parties, but upon their  
 19 citizenship.”). And while a party’s residence may be *prima facie* evidence of that  
 20 party’s domicile when an action is *originally* brought in federal court, residency  
 21 allegations in alone do not suffice to establish citizenship on removal in light of the  
 22 strong presumption against removal jurisdiction. *See State Farm Mut. Auto. Ins. v.*  
 23 *Dyer*, 19 F.3d 514, 520 (10th Cir. 1994); *see Kantor*, 265 F.3d at 857; *Gaus*, 980 F.2d  
 24 at 567.

25 Moreover, Sears cites no other objective facts to establish that Plaintiff is  
 26 domiciled in California, such as “voting registration and voting practices, location of  
 27 personal and real property, location of brokerage and bank accounts, location of  
 28 spouse and family, membership in unions and other organizations, place of

1 employment or business, driver's license and automobile registration, and payment of  
2 taxes." *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). Even construing Sears's  
3 citizenship allegations as ones formed under information and belief, those are likewise  
4 inadequate to establish diversity jurisdiction on removal. On removal, "alleging  
5 diversity of citizenship upon information and belief is insufficient." *Bradford v.*  
6 *Mitchell Bros. Truck Lines*, 217 F. Supp. 525, 527 (N.D. Cal. 1963); *see also Kantor*,  
7 265 F.3d at 857 ("Absent unusual circumstances, a party seeking to invoke diversity  
8 jurisdiction should be able to allege affirmatively the actual citizenship of the relevant  
9 parties.").

10 Because Sears fails to meet its high burden on removal to establish complete  
11 diversity between the parties, the Court **REMANDS** this case to Los Angeles County  
12 Superior Court, Case Number BC519246. The Clerk of Court shall close this case.

13 **IT IS SO ORDERED.**

14 October 1, 2013

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17 **OTIS D. WRIGHT, II**  
18 **UNITED STATES DISTRICT JUDGE**

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